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SUBJECT: SINNED AGAINST OR SINNING? OWNERS OF FAILED
TURKISH BANKS SPEAK OUT

REF: A. ISTANBUL 1577

1B. ISTANBUL 346

Classified By: Consul General Deborah K. Jones. Reasons 1.4 (b,d).

This message was coordinated with Embassy Ankara.

11. (C) Summary: In recent months, a number of owners of failed Turkish banks have begun to speak out to condemn the Turkish government for pursuing a "vendetta" against them-- including for political and even religious reasons-- and to warn that Turkish government actions to seize their assets are both "unlawful" and "unconstitutional." Representatives of these groups have bombarded diplomatic missions with mailings, placed advertisements in newspapers such as the Wall Street Journal, and lobbied aggressively overseas in the United States and Europe, leading to a number of articles in the Western press that have supported their arguments. Given the questions that this campaign has raised, we thought it useful to provide some background and perspective on their allegations. Though in some cases the crackdown on Turkey's failed bank owners may have political side benefits for the GOT, broadly speaking we find their complaints unconvincing, and the bank regulators' tough approach justifiable. End Summary.

Background

12. (SBU) The bulk of Turkey's bank failures occurred in the crisis years of 2000 and 2001. When the government was forced to abandon its exchange rate-based stabilization program and devalue the lira in 2001, many banks were driven into insolvency as a result of the large open positions they had taken to finance their holdings of lira-denominated government securities. It also emerged that many had been misused by their owners to support the operations of their other businesses. The cost to the Turkish government was high. All told, 20 banks were transferred to the Savings Deposit Insurance Fund (SDIF), at a cost of 17.3 billion USD. An additional 21.9 billion USD was spent restructuring Turkey's state banks. With strong support from the IMF, which shared its concern that delay would weaken the banking sector as a whole, the Banking Regulatory and Supervisory Agency (BRSA) and the Savings Deposit Insurance Fund (SDIF) moved expeditiously to resolve individual bank situations through merger, sale, or direct liquidation.

13. (SBU) Turkey's banking travails were capped in 2003 by discovery that Imar Bank, owned by the infamous Uzan clan but previously regarded as a minor player in the banking sector, had been operating fraudulently for years. In place of its audited total of 500 million USD in deposits, investigators discovered that the bank had actually accumulated more than 10 times that total. The Imar Bank scandal-- which required a state injection of USD 6 billion to honor the deposit guarantee-- led directly to adoption at the end of 2003 of Turkey's draconian banking laws, number 4969 and 5020, which permit the Turkish government to recoup its costs by seizing the assets not just of owners and officers of failed banks, but also the assets of their relatives and in-laws.

14. (SBU) Since that time, the Turkish government has vigorously pursued the effort to make good its losses by applying the full letter of the law. As the elusive Kemal Uzan, now in hiding in an unspecified foreign location wrote in a letter to the Consul General in September 2005, "without any court order or judgement, solely based on TMSF administrators' decisions, fungible assets, equipments and buildings of companies not indebted to the TMSF, to any bank under its supervision, or to any agency of the Turkish government, are being offered for sale." (Note: The Uzans are no friends of the U.S. and their complaints about the law's impact on Turkey's investment climate ring hollow, given a separate USD 2 billion fraud they perpetrated against Motorola. End Note.) Up to August 2003, the SDIF collected nearly 1.8 billion USD; under current Chairman Ahmet Erturk it has doubled that total, and hopes to earn back most of the Imarbank costs through its sale of Uzan assets.

Legal Challenges

15. (C) The Uzans are not the only group speaking out against the Turkey's new banking regime and alleging a government "vendetta." Also making the argument is Mustafa Suzer, whose group's Kentbank was taken over in 2001. Suzer's son Serhan, the only member of the family not subject to a travel ban (another weapon in the SDIF's arsenal), has lobbied extensively in Washington and elsewhere, arguing that the Suzers have been targeted because of their secular and Alevi background. They have buttressed their case by pointing to the fact that they won a decision in 2004 in Turkey's High Administrative Court (or Danistay) overturning the seizure of Kentbank. The government's failure to honor that decision, they argue, proves its bias. These charges have resonated in the Western press, appearing in the Washington Times, National Review, and other outlets. (Note: As have charges related to the separate controversy over the Suzer Plaza building, covered in Ref. B. End Note.) Similarly, the owners of Demir Bank and Pamukbank won cases against Turkish regulatory authorities (though Pamukbank owner Mehmet Karamehmet reached a settlement with regulators giving up his right to the bank), and the family of Dinc Bilgin, which owned the failed Etibank, indicates that he soon plans to go to court to prove that the bank was in unsound condition when it was privatized in 1997.

Judiciary's Weakness Compelled a Regulatory Response

16. (C) Yes, but: Current and former banking regulators-- and IFI officials-- are unapologetic about the seizures, and argue that more than anything else the Danistay decisions in Suzer's favor point up lingering weaknesses in Turkey's legal system. Most tellingly, SDIF Chairman Ahmet Erturk told Econ Counselor and P/E Chief earlier this year that the SDIF has taken a hard line with former bank owners precisely because the judicial system was unable to do so. The corruption and abuses that were endemic in the banking system before the crisis, he argued, would be addressed by prosecutors and the courts in a "normal" country, however, Turkish courts were not up to the task. Regarding the Suzers' specific complaint, Erturk said that the bank could not be returned to the Suzers as it no longer existed at the time of the Danistay decision. Instead, the Suzers should sue the government for damages. Both he and a number of banking experts whom we consulted, however, predicted that such a suit would fail, given that the bank had negative equity when it was taken over. Some speculate that the Suzers have not filed such a case as they know that they would lose, and thereby would also be liable for court costs.

17. (SBU) Easy Money: Banking experts remind us that the genesis of the crisis lay in Turkey's weak regulatory supervision of banks in the 1990s, coupled with the government of the day's decision to introduce a full deposit guarantee following an earlier banking crisis. At a time when Treasury guarantees for other projects were difficult to obtain, the politically well-connected quickly saw that this was a way to obtain a defacto government guarantees for their business operations. Political insiders, the mafia, and others all thus moved into banking on a major scale, winning licenses to operate their own banks. One senior banking consultant notes that the vast majority of these banks were not true banks in any real sense, but rather undercapitalized hedge funds that were used to speculate in government securities. As long as the lira remained strong, they were extremely profitable. When the crisis hit, however, they were overexposed, and their capital quickly evaporated. In many cases too, it became apparent that banks had been misused by some group owners to fund the unprofitable operations of other group companies. Tellingly, of the dozens of banks created in the period, none remain in existence today.

Questions of Degree

18. (C) Our contacts among former regulators and within the banking sector note that it is important to differentiate among the varying degrees of criminality of former bank owners. At the top of the scale, they suggest, are the Uzans, who "cooked the books" and were "crooks and criminals." Lower down on the scale are bank owners like Erol Aksoy (Egebank) and Suzer (Kentbank) who used their banks to support other group operations and drove them to financial ruin. One former regulator is dismissive of the Danistay decision on Kentbank, which he argues betrays a total lack of understanding of banking. This contact, who has had his own difficulties with the AK government-- they forced him out-- nonetheless dismisses the suggestion that it is pursuing a vendetta against Suzer and others. The

Secular-Islamist issue has nothing to do with the case, he argues, adding that the BRSA and the Yargitay (High Criminal Court, which has reinstated criminal charges against Suzer Group officials) are pursuing the case correctly.

Changes to Come

19. (C) Both current and former regulators concede that Turkey's current banking legislation is too tough and perhaps even transgresses the constitution. They add that its one-size-fits-all nature may not be appropriate for all the banks taken over in recent years. (Demir Bank, for instance, was not taken over because it was misused, but because it encountered financial difficulties, and so may merit different treatment.) Several predict, however, that such is the level of popular anger over the Uzans' abuses that no one will legally challenge the laws until Turkey's regulators have finished with the group and its assets. At that point, one predicts, the law will be found unconstitutional, with the proviso that all actions taken earlier to implement it will remain valid.

Comment

10. (C) Turkey's banking crisis has left in its wake a tangled web of charges and countercharges, made opaque by the intricacy of the financial dealings in question, the broad scope of ensuing punitive legislation and its unfettered execution, and the simultaneous murkiness of judicial decisions on such cases as Demirbank, Pamukbank, and Kentbank. The charge that Turkish authorities are manipulating the situation for political advantage is one that appears untenable, however, given the fact that (except for Imarbank, which represented corruption on an unprecedented scale) the bank seizures in question predated the current government's tenure, and were undertaken by independent regulators with the full support of international organizations such as the IMF. One senior former regulator can recall only one instance where he was subject to political pressure but in that case it was to desist from excessively pressuring a failed bank owner in Bursa, whose companies were key employers in that politically important city. As for the SDIF, its controversial chief Ahmet Erturk, though he clearly has strong ties to the AK Party, deserves credit for the success of his hard line approach in recovering assets from the bank owners' abuse of the deposit guarantee. End Comment.
JONES